

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

ERNEST V. MARQUEZ §  
VS. § CIVIL ACTION NO. 1:16cv286  
BRAD LIVINGSTON §

ORDER OVERRULING OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Ernest V. Marquez, proceeding *pro se*, filed the above-styled civil rights lawsuit pursuant to 42 U.S.C. § 1983. The court previously referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to 28 U.S.C. § 636 and applicable orders of this court.

Plaintiff filed a motion for temporary restraining order or preliminary injunction (docket entry 4). The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the motion be denied as moot.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. Petitioner filed objections to the Report and Recommendation.

The court has conducted a *de novo* review of the objections. After careful consideration, the court is of the opinion the objections are without merit. Plaintiff states he suffers from Hepatitis C and complains that he is not receiving the same treatment as other inmates. However, as stated by the Magistrate Judge, plaintiff was transferred to another prison unit after he filed his complaint and his motion for preliminary injunctive relief. His transfer made his claim for injunctive relief based on conditions at his former unit moot. *Oliver v. Scott*, 276 F.3d 736, 741 (5th Cir. 2002); *Herman v. Holiday*, 238 F.3d 660, 665 (5th Cir. 2001).<sup>1</sup>

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<sup>1</sup> Plaintiff asserts his transfer to another prison unit does not make his lawsuit moot. Plaintiff is correct. As plaintiff seeks money damages, his lawsuit is not moot. However, his transfer to another unit does make his request for preliminary injunctive relief moot.

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED** as the opinion of the court. Plaintiff's motion for temporary restraining order or preliminary injunction is **DENIED**.

So ORDERED and SIGNED this 27th day of March, 2017.



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Ron Clark, United States District Judge